

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ALTERRA AMERICA INSURANCE CO.,

Plaintiff,

v.

NATIONAL FOOTBALL LEAGUE, et al.,

Defendants.

DISCOVER PROPERTY & CASUALTY
COMPANY, et al.,

Plaintiffs,

v.

NATIONAL FOOTBALL LEAGUE, et al.,

Defendants.

Index No. 652813/2012 E

Hon. Andrea Masley

**STIPULATION FOR
APPOINTMENT OF REFEREE
TO SUPERVISE DISCLOSURE
PURSUANT TO CPLR 3104**

Index No. 652933/2012 E

Hon. Andrea Masley

IT IS HEREBY STIPULATED AND AGREED, by and among the undersigned
counsel as follows:

WHEREAS, the parties in these actions served requests for disclosure, including
demands for discovery and inspection as well as interrogatories, and corresponding
responses to these requests, all pursuant to CPLR Article 31; and

WHEREAS, after service of the requests for disclosure and the responses thereto,
certain disputes arose concerning the parties' disclosure obligations; and

WHEREAS, by joint letter dated February 2, 2018, the parties informed the Court
of certain of these disclosure disputes and that, although they had met and conferred in

good faith on their disputes, it appeared that the parties had reached an impasse on some issues; and

WHEREAS, at a February 6, 2018 conference, the Court presented the parties with several disclosure dispute resolution options, including the retention of a private special referee to assist in resolving the parties' current disclosure disputes, as well as any other disclosure disputes that may arise in the future; and

WHEREAS, the parties discussed the disclosure dispute resolution options presented at the February 6, 2018 conference and, by joint letter dated February 22, 2018, informed the Court of their agreement that the preferred course is the appointment of a private special referee to assist in resolving the parties' disclosure disputes; and

WHEREAS, pursuant to CPLR 3104(b), the Court may permit all of the parties in an action to stipulate that a named attorney may act as referee to supervise all disclosure; and

WHEREAS, the parties have discussed and agree that Hon. Michael H. Dolinger (Ret.) of JAMS should be appointed, pursuant to CPLR 3104, as the referee to supervise all disclosure in these actions, including but not limited to the disclosure disputes outlined in the parties' joint letter dated February 2, 2018; and

WHEREAS, the parties further agree that any application for review of an order of the referee made under CPLR 3104 shall be made pursuant to CPLR 3104(d); provided, however, that an application for review shall be deemed timely for all purposes under CPLR 3104(d) if the motion is made within fourteen (14) days after the order to be reviewed is made in writing and issued via e-mail to all parties by the Special Referee; and

WHEREAS, the parties further agree generally to split the fees and costs of the referee for his services in these actions equally between the National Football League and NFL Properties LLC (the “NFL Policyholders”), on the one hand, and the remaining parties (“Insurer Parties”), on the other hand, as more particularly described below; and

WHEREFORE, it is hereby stipulated and agreed by and among the undersigned counsel that:

1. Hon. Michael H. Dolinger (Ret.) of JAMS may act as a referee pursuant to CPLR 3104 to supervise all disclosure in these actions, including but not limited to the disclosure disputes outlined in the parties’ joint letter dated February 2, 2018, with all of the powers of the Court specified under CPLR 3104(c) available to him.

2. Any application for review of an order of the referee made under CPLR 3104 shall be made pursuant to CPLR 3104(d); provided, however, that an application for review shall be deemed timely for all purposes under CPLR 3104(d) if the motion is made within fourteen (14) days after the order to be reviewed is made in writing and issued via e-mail to all parties by the Special Referee.

3. The referee’s fees and costs for his service in these actions will be paid by the parties, with such fees and costs split equally between the NFL Policyholders, on the one hand, and the Insurer Parties, on the other hand. The Insurer Parties’ share will be allocated on a per capita basis among 11 law firms representing the insurer groups in this action, except to the extent a particular dispute is brought by or against fewer than all insurer groups, in which event it will be allocated on a per capita basis among the involved insurer groups. Notwithstanding anything to the contrary above, the NFL Policyholders shall have no responsibility for the referee’s fees and costs for his service in connection with any dispute not involving the NFL Policyholders.

4. Special Referee Dolinger shall be provided a copy of the Stipulation and Order for the Production and Exchange of Confidential Information entered by this Court on May 22, 2013 and shall be deemed a permissible recipient of Confidential Information and Attorneys' Eyes Only Information pursuant to Paragraphs 6 and 7 thereunder.

5. The parties consent to the entry of the Proposed Order attached as Exhibit A to this Stipulation, which embodies the foregoing stipulations and agreements.

This stipulation may be executed in counterparts, each of which shall be deemed an original but all of which constitute one and the same agreement. Facsimile signatures, and those executed with the permission of counsel, shall have the same force and effect as originals.

SO STIPULATED:

New York, New York
April 27, 2018

COVINGTON & BURLING LLP

By



John E. Hall

John E. Hall

The New York Times Building
620 Eighth Avenue
New York, New York 10018
(212) 841-1000

Mitchell F. Dolin
Michael Lechliter
COVINGTON & BURLING LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956

*Counsel for Defendants the National
Football League and NFL Properties, LLC*

CLYDE & CO US LLP

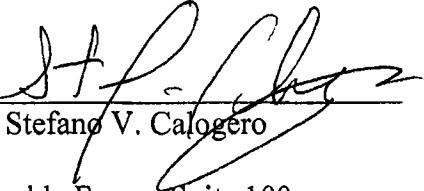
By _____
Daren McNally

The Chrysler Building
405 Lexington Avenue
New York, New York 10174
(212) 972-8222

*Counsel for Defendants ACE American
Insurance Company, Century Indemnity
Company (as successor in interest to
Insurance Company of North America,
Indemnity Insurance Company of North
America, and California Union Insurance
Company), Federal Insurance Company,
Great Northern Insurance Company, Illinois
Union Insurance Company, Pacific
Indemnity Company, Vigilant Insurance
Company, and Westchester Fire Insurance
Company*

WINDELS MARX LANE &
MITTENDORF, LLP

By


Stefano V. Calogero

One Giralta Farms, Suite 100
Madison, New Jersey 07940
(973) 966-3200

*Counsel for Defendant Allstate Insurance
Company*

COUGHLIN DUFFY LLP

By 

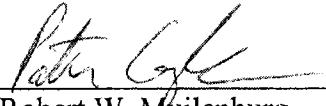
Robert W. Muilenburg

Patrick K. Coughlin

Wall Street Plaza
88 Pine Street, 28th Floor
New York, New York 10005
(212) 483-0105

*Counsel for Defendant American Guarantee
& Liability Insurance Company*

COUGHLIN DUFFY LLP

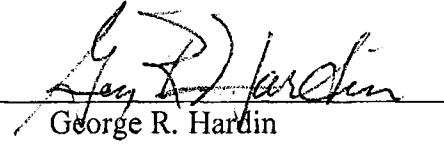
By 

Robert W. Muilenburg
Patrick K. Coughlin

Wall Street Plaza
88 Pine Street, 28th Floor
New York, New York 10005
(212) 483-0105

*Counsel for Defendant Arrowood Indemnity
Company*

HARDIN, KUNDLA, MCKEON &
POLETTO, P.A.

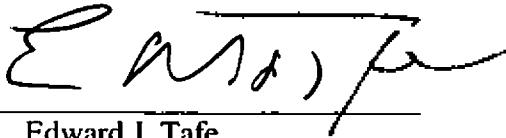
By 
George R. Hardin

110 William Street, 24th Floor
New York, New York 10038
(212) 571-0111

*Counsel for Defendants Bedivere Insurance
Company, formerly known as OneBeacon
Insurance Company*

CNA COVERAGE LITIGATION GROUP

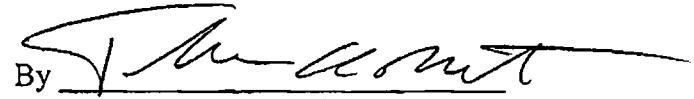
By


Edward J. Tafe

555 12th Street, Suite 600
Oakland, California 94607
(510) 645-2300

*Counsel for Defendants Continental
Casualty Company and The Continental
Insurance Company*

PUTNEY, TWOMBLY, HALL & HIRSON
LLP

By 
Thomas A. Martin

521 Fifth Avenue
New York, New York 10175
(212) 682-0020

HERMES, NETBURN, O'CONNOR &
SPEARING, P.C.

Kevin O'Connor*
265 Franklin Street, Seventh Floor
Boston, Massachusetts 02110
(202) 457-1600

* Admitted *Pro Hac Vice*

*Counsel for Plaintiffs/Defendants Discover
Property & Casualty Insurance Company,
St. Paul Protective Insurance Company,
Travelers Casualty & Surety Company,
Travelers Indemnity Company, Travelers
Property Casualty Company of America*

STEPTOE & JOHNSON LLP

By Sarah D. Gordon
Sarah D. Gordon

1330 Connecticut Ave., NW
Washington, DC 20036
(202) 429-3000

*Counsel for Defendants Hartford Accident
& Indemnity Company and New England
Reinsurance Corporation*

DILWORTH PAXSON LLP

By

William E. McGrath, Jr.

2 Research Way
Princeton, New Jersey 08540
(609) 987-6679

*Counsel for Defendant Munich Reinsurance
America, Inc.*

KENNEDYS CMK LLP

By



Christopher R. Carroll

120 Mountain View Boulevard
Basking Ridge, New Jersey 07920
(908) 848-6300

*Counsel for Defendants the TIG Insurance
Company, U.S. Fire Insurance Company,
and The North River Insurance Company*

VIGORITO, BARKER, PORTER &
PATTERSON, LLP

By _____

Gregg D. Weinstock

Michael Passman
MHP

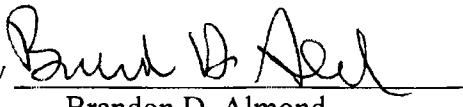
300 Garden City Plaza, Suite 308
Garden City, NY 11530
(516) 282-3355

BATESCAREY LLP

Adam H. Fleischer
Michael H. Passman
191 N. Wacker, Suite 2400
Chicago, IL 60606
(312) 762-3100

*Counsel for Defendant Westport Insurance
Company*

TROUTMAN SANDERS LLP

By 
Brandon D. Almond

401 9th St. NW, Suite 1000
Washington, DC 20004
(202) 274-2864

*Counsel for Defendants XL Insurance
America, Inc. and XL Select Insurance
Company*